

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

ANNUAL COMPLIANCE REVIEW, 2012

Docket No. ACR2012

**JOINT MOTION OF
ALLIANCE OF NONPROFIT MAILERS
AND UNITED STATES POSTAL SERVICE
TO ADOPT STANDARDS GOVERNING
PRICING OF WORKSHARING DISCOUNTS
FOR NONPROFIT STANDARD MAIL
(March 13, 2013)**

1. The Alliance of Nonprofit Mailers (“ANM”) and the United States Postal Service (“USPS” or “Postal Service”) jointly move for adoption in this docket of the standards set forth in Attachment A. The standards are intended to deal with discrimination issues in future cases involving the pricing of worksharing discounts for nonprofit Standard Mail. In support of this motion, ANM and the USPS respectfully state as follows:

2. The relationship between worksharing discounts for nonprofit Standard Mail vs. commercial Standard Mail has emerged as a subject of dispute in Docket Nos. R2013-1 and ACR2012. In Docket No. R2013-1, *Notice of Market-Dominant Price Adjustment*, in response to a Commission request, the Postal Service provided an explanation as to why, in the Postal Service’s view, the differences between the worksharing discounts proposed for nonprofit vs. commercial Standard Mail rates in that docket were consistent with the Postal Accountability and Enhancement Act of 2006 (“PAEA”) and not contrary to *National Easter Seal Society v. USPS*, 656 F.2d 754, 760-

72 (D.C. Cir. 1981). ANM challenged the Postal Service's justification. The Commission found the justification "reasonable" "in the circumstances of this rate adjustment." Order No. 1573 (December 11, 2012) at 6-9.

3. ANM has petitioned for review of Order No. 1573 in the U.S. Court of Appeals. *Alliance of Nonprofit Mailers v. Postal Regulatory Commission*, No. 13-1006 (D.C. Cir., petition for review filed January 10, 2013). ANM's initial brief as petitioner is due on April 23, 2013. *Id.*, order issued March 11, 2013.

4. In the present docket, ANM has contended that the worksharing discounts in effect for nonprofit Standard Mail during FY 2012 and the worksharing discounts for nonprofit Standard Mail approved in Docket No. R2013-1 that differed from the corresponding commercial discounts violated 39 U.S.C. § 403(c) and *National Easter Seal Society v. USPS*, 656 F.2d 754, 760-72 (D.C. Cir. 1981), because, in ANM's view, the Postal Service has not adequately justified the differences. ANM comments; *accord*, Public Representative Reply Comments at 31-34; Valpak Reply Comments at 36-39.

5. The Postal Service affirms in this docket that, in its opinion, the Docket Nos. R2013-1 discounts and the FY 2012 discounts satisfy all legal requirements and have been adequately justified. In addition, the Postal Service has contended that, given that the Commission has previously approved the FY 2012 discounts and that no relevant circumstances have changed since then, the lawfulness of the FY 2012 discounts is outside the proper scope of this docket. USPS Reply Comments (February 15, 2013) at 2, 16-18.

6. ANM disagrees with these conclusions. With respect to the proper scope of this docket, ANM believes that approval of rate changes in a Section 3622(d) proceeding forecloses relitigation of only a limited set of issues in a subsequent annual compliance review proceeding under 39 U.S.C. § 3653, and that the discrimination issue raised by ANM in this docket—which issue was not litigated in any of the prior post-PAEA cases—does not fall within the limited set of issues that are thus foreclosed from being raised in this docket.

7. ANM and the Postal Service have met and conferred in an attempt to settle these issues. As a result of these discussions, the two parties jointly ask the Commission to adopt the standards set forth in Attachment A to govern the resolution of potential discrimination issues arising from the worksharing discounts offered in the future to nonprofit vs. commercial Standard Mail.

8. Adoption by the Commission of the standards set forth in Attachment A for prospective application (assuming that the proposed standards are adopted without modification) will satisfy the concerns raised by ANM in this proceeding and Docket No. R2013-1, and will also cause ANM to move to dismiss its petition for review in Docket No. 13-1006 in the D.C. Circuit.

9. The parties note that, today, the Commission issued a notice scheduling a public conference for tomorrow, March 14, 2013, to discuss this motion. Notice of Public Conference, Docket No. ACR2012 (March 13, 2013). Given the short time available, and the need for internal consultations, the Postal Service will find it difficult to participate in a public conference as scheduled. Accordingly, the Postal Service respectfully requests that the scheduled conference be suspended, pending a

determination as to whether a meeting is required, in light of this motion and the proposed standards.

Respectfully submitted,

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Attachment A

In any future case in which the Postal Service proposes to establish a worksharing discount for nonprofit Standard Mail that differs from the corresponding discount for commercial Standard Mail:

1. The Postal Service's notice of price adjustment shall:
 - (a) identify each instance in which the proposed nonprofit discount differs from the corresponding commercial discount; and
 - (b) provide the Postal Service's justification(s) for each difference.
2. The Commission will review the rates established by the Postal Service in paragraph (1), above, in accordance with 39 U.S.C. § 403(c) and the Court of Appeals' decision in *National Easter Seal Society for Crippled Children and Adults v. United States Postal Service*, 656 F2d 754 (D.C. Cir. 1981).
3. The Commission's decisions in Docket No. R2013-1 and other post-PAEA price adjustment cases that approved price adjustments with unequal worksharing discounts shall not control the Commission's determination under paragraph (2), above when:
 - (a) the Postal Service fails to comply with paragraph (1); or
 - (b) the Postal Service complies with paragraph (1), but another party files a timely challenge to the lawfulness of the discounts..
4. If the Commission finds, under paragraph (2), above, that there is no reasonable justification for the difference in discounts, the Postal Service shall provide an alternative schedule of nonprofit rates that (1) generates approximately the same total revenue as the rates proposed by the Postal Service, and (2) eliminates the noncompliance with 39 U.S.C. § 403(c) found by the Commission.